IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1750 of 1988

With
FIRST APPEAL No. 1224 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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NEW INDIA ASSURANCE CO. LTD. - Appellant(s)
Versus
CHANDRAKANT HARILAL SHAH & 5 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1,
MR KB PUJARA for Defendant(s) : 1 - 3.
None for Defendant(s) : 4 - 5.
MR JJ YAJNIK for Defendant(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/07/2006

ORAL JUDGMENT

1. These appeals are directed against the judgement and award dated 07.05.1988 passed by the Motor Accident Claims Tribunal, Bhavnagar, in MACP No.20 of 1983 whereby the claimants were awarded a sum of Rs.65000/- along with interest at the rate of 12% per annum.

2. The claim petition was filed in pursuance of an accident which had occurred on 14.08.82 while the

deceased Neeta alongwith her two children-original claimant nos. 2 & 3 was going towards Boardi Gate in an auto. The auto while crossing an unmanned open railway crossing was knocked down by a passing train on narrow guage section. The kids were thrown out of the track but the deceased was thrown on the track and was run over by the train. The claimants being the husband and children of the deceased filed the claim petition before the Tribunal and the Tribunal after hearing the parties passed the aforesaid award.

3. Learned counsel for the appellant has contended that in view of the specific provision contained in Section 95(2)(b)(ii) of the Motor Vehicles Act, the Insurance Company's liability in respect of passenger carried for hire or reward is limited to Rs.10000/-. The relevant part of the said section as existing at the time of the accident reads as under:

> “95.(2) subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely:-
>
> (a) xxx xxx xxx

(b) where the vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, -

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all,

(ii) in respect of passengers, a limit of ten thousand rupees for each individual passenger."

4. A perusal of the said section shows that the liability in respect of passengers, is limited to an extent of Rupees Ten Thousand for each individual passenger. The accident in question is of the year 1982 and therefore the liability would not be more than Rs.10000/- qua the Insurance Company. This view is supported by a decision of this Court in the case of United India Fire and General Insurance Co. Ltd. Vs. Bachu Kaba Satrotia and ors., reported in 1986(1) GLR 463 wherein it is held that under section 95(2) of Motor Vehicles Act (IV of 1959) the liability of insurer in respect of a passenger carried for hire or reward by statute is limited to Rs.10000/- per individual

passenger.

5. Learned counsel for the respondent-original claimant is not able to contest the aforesaid legal position. Therefore the award of the Tribunal which extents to Rs.65000/- is patently erroneous.

6. In the premises aforesaid, the First Appeal No. 1750/88 is partly allowed. The amount of Rs.60,000/- shall be deposited by the original respondent no.4-railway. It is made clear that if the railway has already deposited Rs. 32,500/-, then the balance amount of Rs. 27,500/- with interest and costs shall be deposited by the railway. However, so far as the present appellant Insurance Company is concerned, the award will stand modified to the extent that the award amount awarded against the appellant will be Rs.10000/- with running interest thereon at the rate of 12% per annum from the date of the application till realization. The amount of Rs. 5000/- deposited by the insurance company shall be allowed to be withdrawn by the original claimants together with costs and interest. The remaining amount lying in the FDR along with interest shall be refunded to the Insurance Company. The award of the Claims Tribunal shall stand modified accordingly. No

order as to costs.

7. In view of the order passed in First Appeal No. 1750/88, First Appeal No. 1224/88 shall not survive and is accordingly disposed of. No order as to costs.

[K.S. JHAVERI, J.]

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